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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,036	07/14/2003	Duane Sibbet	14124.2USU1	6051
23552	7590	06/10/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/619,036	Applicant(s) SIBBET, DUANE	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14 July 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of the IDS received 14 July 2004 and Request for Withdrawal of Attorney received 29 April 2004.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, and 5-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Simmons (US 3,252,251; 4th document on Applicant's 1449) in view of Medoff et al. (US 6,207,729 B1).

As to Claims 1, 7, and 8, Simmons discloses a turf cover apparatus (Figs. 3 and 4) comprising a first cover (12 of Fig. 4) disposed at a bottom of the turf cover apparatus and being adaptable to rest of on a ground surface (for example, Fig. 2); a second cover (11 of Fig. 4) connected to the first cover (shown in Figs. 3 and 4), the second cover disposed at a top of the turf cover apparatus (shown in Fig. 4); wherein the first cover is a mesh material (12 of Fig. 4; col. 3 lines 16-25), the second cover is a substantially chemical and moisture resistant material (11 of Fig. 4; col. 3 lines 3-14). Not disclosed is an insulating layer disposed between the two covers made of an organic material enabling air circulation. Medoff et al., however, discloses insulating layer ("insulation" of col. 6 lines 35-37) disposed between the two covers ("netting" and "shell" of col. 4 lines 18-22) made of chopped straw which would have stems ("cereal straw" of col. 3 lines 13-15; "rotary cutter" of col. 3 lines 30-33) enabling air circulation. It would have

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been obvious to one of ordinary skill in the art at the time of the invention to modify the cover apparatus of Simmons by adding a straw insulating layer as disclosed by Medoff et al. so as to increase the use of straw so as to increase its price and to add an insulating layer so as to keep plant protected from cold (see Simmons at col. 2 lines 23-27).

As to Claim 2, Simmons as modified by Medoff et al. further disclose the first cover configured to be securable to the ground surface (see Figs. 1-4).

As to Claim 5, the limitations of Claim 1 are disclosed as described above. Not disclosed is the insulating layer being 4-6 inches thick. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the turf cover of Simmons as modified by Medoff et al. by making the insulating layer 4-6 inches thick so as to have the cover with effective insulation so as to protect the plants.

As to Claim 6, Simmons as modified by Medoff et al. further disclose the insulation system arranged to enable air passage (the straw of Medoff et al. would inherently have this property).

As to Claims 9-11, Simmons as modified by Medoff et al. further disclose the second cover of polyethylene coated material (col. 3 lines 1-5; defining polyethylene as polyethylene coated material) and facing an external environment (see Figs. 1-4).

Claim 3 and 12-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Simmons (US 3,252,251; 4th document on Applicant's 1449) in view of Medoff et al. (US 6,207,729 B1) in further view of Webster et al. (US 3,863,387; 7th document on Applicant's 1449).

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As to Claim 3, the limitations of Claim 2 are disclosed as described above. Not disclosed is the ground surface a golf course green. Webster et al., however, discloses a turf cover on a golf course green (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the turf cover of Simmons as modified by Medoff et al. by placing on a golf course green as disclosed by Webster et al. so as to protect the turf on the golf course and to find more uses for the turf cover.

As to Claims 12 and 13, Simmons discloses a turf cover apparatus (Figs. 3 and 4) comprising a first cover (12 of Fig. 4) disposed at a bottom of the turf cover apparatus and being adaptable to rest of on a ground surface (for example, Fig. 2); a second cover (11 of Fig. 4) connected to the first cover (shown in Figs. 3 and 4), the second cover disposed at a top of the turf cover apparatus (shown in Fig. 4); wherein the first cover is a mesh material (12 of Fig. 4; col. 3 lines 16-25), the second cover is a substantially chemical and moisture resistant material (11 of Fig. 4; col. 3 lines 3-14). Not disclosed is an insulating layer disposed between the two covers made of an organic material enabling air circulation; and, using on a golf course green. Medoff et al., however, discloses insulating layer ("insulation" of col. 6 lines 35-37) disposed between the two covers ("netting" and "shell" of col. 4 lines 18-22) made of an organic material ("cereal straw" of col. 3 lines 13-15), enabling and controlling air circulation (inherent with straw); and, Webster et al. discloses a turf cover on a golf course green (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover apparatus of Simmons by adding a straw insulating layer as disclosed by Medoff et al. so as to increase the use of straw so as to increase its use and price and to add an insulating layer so as to

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keep plant protected from cold (see Simmons at col. 2 lines 23-27); and further, by placing on a golf course green as disclosed by Webster et al. so as to protect the turf on the golf course and to find more uses for the turf cover. The turf cover of Simmons as modified by Medoff et al. and Webster et al. inherently performs the method steps recited in Claim 12.

As to Claim 14, the limitations of Claim 12 are disclosed as described above. Medoff et al. further discloses chopped straw ("cereal straw" of col. 3 lines 13-15; "rotary cutter" of col. 3 lines 30-33). Not disclosed is the insulating layer being 4-6 inches thick. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the turf cover of Simmons as modified by Medoff et al. and Webster et al. by making the insulating layer 4-6 inches thick so as to have the cover with effective insulation so as to protect the plants.

As to Claims 15 and 16, Simmons as modified by Medoff et al. (US 6,207,729 B1) and further modified by Webster et al. further disclose the second layer preventing chemical penetration and made of polyethylene (see Simmons at col. 3 lines 1-9).

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Simmons (US 3,252,251; 4th document on Applicant's 1449) in view of Medoff et al. (US 6,207,729 B1) in further view of Stephens et al. (US 5,651,641).

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the first cover a tensile polyester. Stephens et al., however, discloses a mesh of tensile polyester (12 of Fig. 1A; col. 6 lines 49-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the turf cover of Simmons as modified by

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Medoff et al. so as to have mesh with tensile and shear strength (see Stephens et al. at col. 4 lines 1-11) so as to make the turf cover resist tearing.

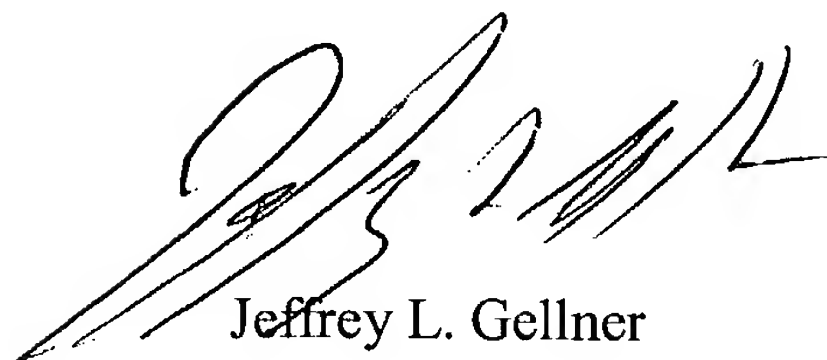
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Soller disclose in the prior art a turf cover. Hazen et al. disclose in the prior art a ground cover made of straw. Sibbet ('824 A1) discloses the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', is written over the printed name.

Jeffrey L. Gellner